

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Community Planning and Development****24 CFR Part 572**

[Docket No. FR-3857-I-01]

RIN 2501-AB77

HOPE for Homeownership of Single Family Homes Program (HOPE 3)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the HOPE for Homeownership of Single Family Homes Program (HOPE 3) by making a number of miscellaneous changes, generally based on comments by HOPE 3 Program grantees or statutory amendments.

DATES: Effective Date: August 11, 1995. Comments due date: September 11, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Office of Affordable Housing Programs, 451 Seventh Street SW, Washington, DC 20410; (202) 708-3226, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act Statement**

The information collection requirements for the HOPE for Homeownership of Single Family Homes Program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2506-0128. This interim rule does not contain additional information collection requirements.

II. Background

The HOPE for Homeownership of Single Family Homes Program (HOPE 3) is authorized by title IV, subtitle C, of

the National Affordable Housing Act (NAHA), as amended by the Housing and Community Development Act of 1992. The purpose of the HOPE 3 program is to provide homeownership opportunities in certain single family housing for eligible families and individuals (generally, low-income first-time homebuyers). The Department published for public comment Guidelines for HOPE 3 on February 4, 1991 (56 FR 4458), revised Guidelines on January 14, 1992 (57 FR 1592), and a final rule on July 7, 1993 (58 FR 36518).

Changes to the final rule contained in this interim rule are in response to comments from HOPE 3 grant recipients and HUD's experience with the program during the first two funding rounds. The purpose of the changes is to correct provisions of the final rule which unnecessarily create operational difficulties and to streamline program implementation.

Specifically, this interim rule implements the following changes to the HOPE 3 Program: Making conforming changes at § 572.400 to reference the Consolidated Plan under part 91, rather than the CHAS; revising the requirements for how income eligibility and affordability are determined; counting the financing costs of program-required rehabilitation (whenever incurred) when determining whether a homebuyer can afford a HOPE 3 unit; eliminating the prohibition against the commingling of grant or match funds with sale and resale proceeds; adding a paragraph authorizing program closeout issuances; and reducing the match requirement from 33 to 25 percent for grants awarded after April 11, 1994. These changes are discussed individually in the discussion which follows.

Section 572.120(a) is being revised to ensure that the same annual income used for the purpose of determining eligibility is used as the basis (divided by 12 to determine monthly income) for determining affordability except that, for the purposes of determining affordability, a recipient may, but is not required to, adjust downward the monthly incomes of eligible families using reasonable standards and procedures consistently applied. Previously, recipients were required to adjust the family income in accordance with 24 CFR part 813, part 913 or part 905 to determine affordability which is not appropriate to homeownership activities.

Therefore, under the interim rule, the grantee or its designee will determine whether an applicant family is an eligible family, defined in § 572.5 as a

low-income family who is a first-time homebuyer. The definition of low-income family in § 572.5 directs the grantee to determine whether the family is a low-income family according to one of the parts of 24 CFR cited therein, e.g., 24 CFR part 813. If part 813 is applicable, the family's annual income would be determined in accordance with 24 CFR 813.106. This annual income (with further reasonable adjustments by the grantee, if applicable) would then be compared with the applicable income limits published annually by HUD (based on 80 percent of area median income), with adjustments for high-cost areas, if applicable, for the applicable family size. Then (assuming the two determinations are reasonably contemporaneous) one-twelfth of the same annual income will be used as the basis for the affordability calculation required by § 572.120(a).

It should also be noted that the HOPE 3 regulations neither entitle an eligible family which meets the statutory affordability standard to receive a home under the program, nor mandate that lenders use the same income in determining whether a family qualifies for a mortgage. As to the former, whether a family actually receives a home may depend on entirely different factors, such as the sizes of homes available compared to the size of the family, and the other financial obligations the family may have in addition to a projected mortgage on the HOPE 3 property. As to the latter point, while the maximum size of an eligible family's monthly PITI payment for its HOPE 3 acquisition/rehabilitation obligations is limited by the statutorily-required affordability determination, a mortgage lender is not necessarily required to use the same income base for determining affordability to repay a mortgage as is used by the grantee in making a statutory affordability determination.

A clarification of the affordability requirements in § 572.120(a) is also necessary to insure that families are not indebted with HOPE 3 program-related financing costs for acquisition and rehabilitation that exceed their means. The final regulation assumed that rehabilitation necessary to bring a property up to local code or housing quality standards would occur prior to closing or shortly thereafter, and the payments related to the rehabilitation would be considered in the family's affordability calculation at the time of closing. However, in certain situations, rehabilitation of properties required by the program has occurred after families have taken title to their properties and

is financed through a separate rehabilitation loan. This rule change clarifies the requirement that monthly payments for HOPE 3 Program required rehabilitation, whether it occurs before or after the family takes title to the property, should be considered in the family's affordability calculation. Deferred payment loans due on sale do not need to be included, since they do not represent a monthly financial burden.

Several grantees have requested a change to § 572.115(a) concerning the deadline for property transfers. Those grantees felt that there was an inconsistency between § 572.115(a) and § 572.225(d) in the current regulation. Section 572.115(a) states that all units in eligible properties must be transferred to eligible families within two years of the effective date of the grant agreement, whereas § 572.225(d) states that remedial action may be taken if a grantee fails to provide at least 70 percent of the number of homeownership opportunities proposed in the application within four years of the effective date of the grant agreement. After reviewing these sections, the Department has determined that an inconsistency does not exist between the requirements. Both § 572.115(a) and § 572.225(d) will be retained as program requirements. Section 572.115(a) simply establishes a requirement to transfer properties to families within two years (which can be extended to three years by the Field Office). Section 572.115(a) does not deal at all with the grantee's program volume goals in its HUD-approved application. On the other hand, § 572.225(d) is intended as a minimum performance standard in the event that grantees, due to unforeseen circumstances, such as unanticipated costs incurred by grantees in program implementation due to changes in market conditions, are unable to provide the total number of homeownership opportunities proposed in their applications. Remedial action may be taken under § 572.225(d) at the time of program closeout. A change has been made in § 572.210(f) to permit HUD Field Offices to approve a one year extension of the deadline for completion of activities, and the six-month limit on extensions by Headquarters has been deleted.

Section 572.135(c), which concerns the use of sale and resale proceeds, is changed to remove the prohibition against "commingling" of HOPE 3 grant or match funds with sale and resale proceeds. Under the current regulation, grantees have found it difficult to use their grant funds within the required timeframes if they are first required to

utilize their sale and resale proceeds. The problem is compounded because grantees must use their sale proceeds within one year of receipt even though the accumulated amount of sale proceeds is often not sufficient to carry out a viable activity. This rule change will allow grantees to expeditiously use their resale and sale proceeds to carry out eligible activities by permitting the proceeds to be used at the same time on the same properties with grant or match funds. However, since eligible uses of grant or match funds are somewhat more limited than uses of sale/resale proceeds, grantees should assure that they maintain records sufficient to document the eligible use of both types of funds in accordance with the HOPE 3 Program regulations.

In addition to the above change, the last sentence of § 572.135(c) has been revised. This provision required that the grant recipient, or any other entity approved by HUD to administer the sale and resale proceeds, remain responsible to comply with the existing requirements of the HOPE 3 Program notwithstanding closeout of the HOPE 3 grant. The revision provides that HUD may specify alternative requirements, to the extent permitted by then applicable law, for the approved entity to follow.

A new paragraph (g) has been added at § 572.210 in reference to program closeout in anticipation of the issuance of additional guidance that is currently being developed.

Finally, the references to the 33 percent match requirement in § 572.210 and § 572.220 are amended to reflect a legislative change established by the Multifamily Housing Disposition Reform Act of 1994 ("1994 Act"), which reduced the match requirement from 33 percent to 25 percent of the amount of the implementation grant. The language of the regulation reflects the fact that this legislation affects only grants awarded by HUD (based on the date of HUD obligation of funds) after April 11, 1994, the effective date of the 1994 Act. Therefore, all grants made pursuant to the FY 1995 HOPE 3 NOFA recently published will be governed by the 25 percent match requirement.

III. Findings and Certifications

Justification for Interim Rulemaking

The Department has determined that this interim rule should be adopted without the delay occasioned by requiring prior notice and comment. This interim rule only makes a number of clarifying changes to existing provisions. The purpose of the changes is to correct provisions of the final rule which unnecessarily create operational

difficulties and to streamline program implementation. As such, prior notice and comment are unnecessary under 24 CFR part 10.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. The rule governs the procedures under which HUD will make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Regulatory Agenda

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23394) under Executive Order 12866 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this interim rule does not have federalism implications concerning the division of local, State, and federal responsibilities. This rule only clarifies existing requirements without significantly affecting the relationship between the Federal government and other public bodies or the distribution of power and responsibilities among various levels of government.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this interim rule would have an indirect, though beneficial, impact on family formation, maintenance, and general well-being. Assistance provided under this rule can be expected to support family values, by helping families achieve security and independence; and by enabling them to live in decent, safe, and sanitary

housing. As such, it is not subject to further review under the Order.

The Catalog of Federal Domestic Assistance Number for the HOPE 3 Program is 14.240.

List of Subjects in 24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs-housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, part 572 of title 24 of the Code of Federal Regulations, is amended as follows:

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

1. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

2. In § 572.5, the definition of “*Comprehensive Housing Affordability Strategy (CHAS)*” is removed, and the definition of “*Consolidated plan*” is added in alphabetical order, to read as follows:

§ 572.5 Definitions.

Consolidated plan means the document that is submitted to HUD that serves as the planning document of the jurisdiction, in accordance with 24 CFR part 91.

3. In § 572.120, paragraph (a)(1) is revised to read as follows:

§ 572.120 Affordability standards.

(a) *Initial affordability.* (1) The monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is required under the financing both for the acquisition and for the rehabilitation in accordance with § 572.100(d) of a unit (whether the required rehabilitation occurs before or after the family takes title) must be not less than 20 percent and not more than 30 percent of one-twelfth of the annual income of the family used for the purpose of determining eligibility under § 572.110(a). (For the purpose of determining affordability of the family, the recipient may, at its option, adjust downward the annual incomes of eligible families using reasonable standards and procedures consistently

applied.) HUD may approve a justified request for a floor lower than 20 percent to avoid undue hardship to families, such as where the cost of utilities is high.

4. In § 572.135, paragraph (c) is revised to read as follows:

§ 572.135 Use of proceeds from sales to eligible families, resale proceeds, and program income.

(c) *Requirements for use of sale and resale proceeds.* Sale and resale proceeds must be committed for approved activities within one year of receipt. All sale and resale proceeds must be accounted for by the recipient, and 50 percent of all resale proceeds received by the recipient must be returned to HUD, as described in paragraph (b) of this section. Recipients may use up to 15 percent of their sale and resale proceeds for administrative expenses to expand their HOPE 3 program and provide additional homeownership opportunities. Recipients must retain records on the use of these funds to the same level of detail as required of grant funds under the HOPE 3 system or whatever records HUD otherwise prescribes. The recipient, and any other entity approved by HUD to administer the sale and resale proceeds, remain responsible to comply with the requirements of this part, or such other requirements as HUD may prescribe (consistent with then applicable law) in closeout procedures or agreements.

5. Section 572.210 is amended by revising the first sentence of paragraph (e)(1) and paragraph (f), and by adding a new paragraph (g), to read as follows:

§ 572.210 Implementation grants.

(e) *Matching requirement.* (1) Except as provided in paragraph (e)(2) of this section, recipients of implementation grants must assure that matching contributions equal to not less than 33 percent (or 25 percent for grants awarded by HUD after April 11, 1994) of the amount of the implementation grant will be provided from non-Federal sources to carry out the homeownership program.

(f) *Deadline for Completion.* A recipient must spend all implementation grant amounts within four years from the effective date of the

grant agreement. The HUD Field Office may approve a request to extend the deadline not to exceed one year. HUD Headquarters may approve a further request to extend the deadline where it determines an extension is warranted under the circumstances.

(g) *Program closeout.* Recipients will comply with closeout procedures as issued by HUD.

6. Section 572.220 is amended by revising the first sentence of paragraph (a)(1), and the *example* following paragraph (b)(2)(ii), to read as follows:

§ 572.220 Implementation grants—matching requirements.

(a) *General Requirements.* (1) Each recipient must assure that matching contributions equal to not less than 33 percent (or 25 percent for grants awarded after April 11, 1994) of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program.

(b) * * *

(2) * * *

(ii) * * *

Example: If the grant amount is \$600,000, the recipient must assure the provision of at least \$198,000 (33 percent of grant) or \$150,000 (25 percent of the grant, if awarded after April 11, 1994) from non-Federal sources, as applicable. Contributions for administrative costs that may be counted toward the match may not exceed \$42,000 (7 percent of the grant amount of \$600,000). Although a recipient can spend more than this on administrative costs, it may not be counted towards the match. In addition, the recipient must provide contributions covering the remaining \$156,000 (\$198,000 – \$42,000) or the remaining \$108,000 (\$150,000 – \$42,000 for grants awarded after April 11, 1994) required for the match from non-Federal sources.

7. Section 572.400 is revised to read as follows:

§ 572.400 Consolidated plan.

Applicants must provide a certification of consistency with the approved consolidated plan, in accordance with 24 CFR 91.510.

Dated: June 13, 1995.

Andrew Cuomo,
Assistant Secretary for Community Planning and Development.

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